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IN RE JOHN C.—AN OPPORTUNITY FOR THE NEW YORK COURTS TO SAVE MIRANDA FROM THE PUBLIC SAFETY EXCEPTION

The Constitution of the United States affords an individual a number of guarantees against the processes of the criminal justice system.¹ One such safeguard is the right against self-incrimination.² In the seminal case of *Miranda v. Arizona*,³ the United

¹ See U.S. CONST. amends. IV, V, VI, VIII & XIV. These amendments place certain limitations on governmental power in order to protect individual rights and liberties. See T. MARKS JR. & J. REILLY, *CONSTITUTIONAL CRIMINAL PROCEDURE* (1979). Originally, the fourth, fifth, sixth, and eighth amendments only placed limitations on the power of the the federal government. 1 J. COOK, *CONSTITUTIONAL RIGHTS OF THE ACCUSED* 2 (2d ed. 1985). Today, however, most of the protections afforded by these amendments have been applied to the states through the due process clause of the fourteenth amendment. See 2 R. ROTUNDA, J. NOWAK & J. YOUNG, *TREATISE ON CONSTITUTIONAL LAW: SUBSTANCE AND PROCEDURE* § 14.2, at 2-7 (1986 & Supp. 1987).

The fourth amendment protects individuals against unreasonable searches and seizures, and provides that no warrants shall be issued except upon a showing of probable cause. U.S. CONST. amend. IV. See generally 1-3 W. LAFAYE, *SEARCH AND SEIZURE: A TREATISE ON THE FOURTH AMENDMENT* (1978 & Supp. 1986).

Among the protections provided by the fifth amendment are the requirement of indictment by a grand jury in cases involving infamous crimes, the prohibition against double jeopardy, the privilege against self-incrimination, and the guarantee that no person shall "be deprived of life, liberty, or property, without due process of law" U.S. CONST. amend. V.

The sixth amendment guarantees a defendant in criminal cases the right to a speedy and public trial by an impartial jury, the right to confront opposing witnesses, the right to be informed of the accusations against him, and the right to have the assistance of counsel. U.S. CONST. amend. VI.

The eighth amendment protects those convicted of crimes from being subjected to cruel and unusual punishment and prohibits the setting of excessive bail. U.S. CONST. amend. VIII.

For a thorough discussion of the guarantees afforded by these amendments, see 1-3 J. COOK, *supra*.

² See U.S. CONST. amend. V. The fifth amendment provides that "[n]o person shall . . . be compelled in any criminal case to be a witness against himself" *Id.* This guarantee was made binding upon the states through the fourteenth amendment in *Malloy v. Hogan*, 378 U.S. 1 (1964).

The privilege against self-incrimination was developed to combat the inquisitorial methods of interrogation that were used in England in the early seventeenth century. See *Brown v. Walker*, 161 U.S. 591, 596-97 (1896). "So deeply did the iniquities of the ancient system impress themselves upon the minds of the American colonists that the States, with one accord, made a denial of the right to question an accused person a part of their fundamental law" *Id.* at 597. See also L. LEVY, *ORIGINS OF THE FIFTH AMENDMENT* (1968)

States Supreme Court held that a criminal suspect had to be advised of this right prior to custodial interrogation,⁴ otherwise, any incriminating responses made during questioning would not be allowed into evidence at trial.⁵ However, in *New York v. Quarles*,⁶ the Court subsequently carved out an exception to this rule, whereby statements made by a suspect during custodial interrogation would be admissible at trial, despite the absence of *Miranda*

(well-documented discussion of genesis of fifth amendment's privilege against self-incrimination).

The fifth amendment's guarantee against being compelled to incriminate oneself reflects many of society's fundamental values. See *Murphy v. Waterfront Comm'n*, 378 U.S. 52, 55 (1964) (describing policies embodied in privilege against self-incrimination). It makes manifest "our preference for an accusatorial rather than an inquisitorial system of criminal justice," and "our realization that the privilege, while sometimes 'a shelter to the guilty,' is often 'a protection to the innocent.'" *Id.* (citation omitted).

³ 384 U.S. 436 (1966). The *Miranda* decision involved four separate cases which were consolidated on appeal. See *id.* at 491-99. In each case, the defendant had been arrested, taken to a police station, and interrogated without fully being informed of his constitutional rights. See *id.* During the course of each of the interrogations, the police secured a confession from the defendant that was used at trial to obtain a conviction. *Id.* at 445.

⁴ See *id.* at 444. The *Miranda* Court defined "custodial interrogation" as "questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way." *Id.* (footnote omitted). The Supreme Court has subsequently clarified the meaning of "custody" by stating that "the ultimate inquiry is simply whether there is a 'formal arrest or restraint on freedom of movement' of the degree associated with a formal arrest." *California v. Beheler*, 463 U.S. 1121, 1125 (1983) (quoting *Oregon v. Mathiason*, 429 U.S. 492, 495 (1977)). The Court has also expanded the meaning of "interrogation" to encompass not only "express questioning, but also to [include] any words or actions on the part of the police (other than those normally attendant to arrest and custody) that the police should know are reasonably likely to elicit an incriminating response from the suspect." *Rhode Island v. Innis*, 446 U.S. 291, 301 (1980) (footnotes omitted).

⁵ *Miranda*, 384 U.S. at 444. Specifically, the Court held that:

without proper safeguards the process of in-custody interrogation of persons suspected or accused of crime contains inherently compelling pressures which work to undermine the individual's will to resist and to compel him to speak where he would not otherwise do so freely. In order to combat these pressures and to permit a full opportunity to exercise the privilege against self-incrimination, the accused must be adequately and effectively apprised of his rights and the exercise of those rights must be fully honored.

Id. at 467. Consequently, the Court concluded that all statements made by the accused during custodial interrogation should be inadmissible under the fifth amendment unless the accused is:

warned prior to any questioning that he has the right to remain silent, that anything he says can be used against him in a court of law, that he has the right to the presence of an attorney, and that if he cannot afford an attorney one will be appointed for him prior to any questioning if he so desires.

Id. at 479.

⁶ 467 U.S. 649 (1984).

warnings, when the questioning of the suspect could have been reasonably prompted by a concern for the public safety.⁷ Recently, in *In re John C.*,⁸ the Appellate Division, Second Department, determined that the public safety exception was not applicable, despite the presence of conditions apparently sufficient to raise it.⁹

In re John C. involved the questioning of an eleven-year-old boy by police officers concerning the location of a gun used in the shooting of another youth.¹⁰ At no time during the questioning was the juvenile advised of his *Miranda* rights.¹¹ During the course of his interrogation he made several incriminating statements.¹² At his juvenile delinquency proceeding in family court, the youth moved to have these statements suppressed, claiming a violation of his right against self-incrimination.¹³ The Family Court, Queens County, partially denied the motion to suppress, holding that a number of the statements were admissible under the *Quarles* public safety exception.¹⁴

In reversing the family court, the Appellate Division, Second Department, distinguished the case from *Quarles*.¹⁵ The court, relying on the length of the interrogation and the number of police officers present, found that there was lacking the same type of vol-

⁷ *Id.* at 656. The Court held that "overriding considerations of public safety [could] justify [an] officer's failure to provide *Miranda* warnings" preceding custodial interrogation of the suspect. *Id.* at 651.

⁸ 130 App. Div. 2d 246, 519 N.Y.S.2d 223 (2d Dep't 1987).

⁹ *Id.* at 247, 519 N.Y.S.2d at 224.

¹⁰ *Id.* For a discussion of some of the problems dealing with a juvenile's capacity to waive his *Miranda* rights, see Grisso, *Juveniles' Capacities to Waive Miranda Rights: An Empirical Analysis*, 68 CALIF. L. REV. 1134 (1980).

¹¹ *In re John C.*, 130 App. Div. 2d at 247-48, 519 N.Y.S.2d at 224-25.

¹² *Id.* The youth was confronted by police officers in the apartment where the shooting had taken place after the complainant told the officers that the youth had shot him. *Id.* The juvenile was then asked: "Why did you shoot him and where is the gun?" *Id.* at 248, 519 N.Y.S.2d at 224. He responded, "I took the cartridge out. I didn't know the gun was loaded. I didn't mean to shoot my friend. I don't have it." *Id.* The youth was subsequently placed under arrest and taken to another room in the apartment where he was further questioned concerning the location of the gun and eventually told the officers that he had given it to a friend. *Id.* at 248, 519 N.Y.S.2d at 224-25.

¹³ *Id.* at 247, 519 N.Y.S.2d at 224. The most commonly used procedural device to vindicate a violation of a person's constitutional rights is the motion to suppress evidence. R. McNAMARA, CONSTITUTIONAL LIMITATIONS ON CRIMINAL PROCEDURE 231 (1982). For a discussion of the origin and development of the exclusionary rule, see *id.* at 231-33.

¹⁴ *In re John C.*, 130 App. Div. 2d at 249, 519 N.Y.S.2d at 225. The family court excluded all of the statements made by the youth except those made in response to the questions concerning the location of the gun. *Id.*

¹⁵ *Id.* at 253-54, 519 N.Y.S.2d at 228-29.

atile situation that was present in *Quarles*.¹⁶ The court also noted that the officer who interrogated the youth did not appear to question him out of any concern for the public safety.¹⁷

However, when *Quarles* is closely examined, the factual distinctions cited by the appellate division in distinguishing *In re John C.* appear illusory. It is submitted that the appellate division should have employed an alternative approach in holding the public safety exception inapplicable. This Comment will analyze the shortcomings of the public safety exception and suggest that the New York courts rely to a greater degree on the provisions of the New York State Constitution in determining the extent of a person's right against self-incrimination. Such an approach would allow the New York courts to ensure that the constitutional safeguards enunciated in *Miranda* are preserved.

SELF-INCRIMINATION PRIOR TO *Quarles*

Prior to *Miranda*, the fifth amendment right against self-incrimination was considered only applicable to courtroom proceedings, whereas police interrogations were generally scrutinized under the fourteenth amendment.¹⁸ In determining whether a suspect's rights had been violated under the fourteenth amendment, the courts generally employed a due process "voluntariness" test.¹⁹

¹⁶ *Id.* at 254, 519 N.Y.S.2d at 228. See *infra* text accompanying notes 28-34 (discussing facts of *Quarles*).

¹⁷ *Id.*

¹⁸ See, e.g., *Brown v. Mississippi*, 297 U.S. 278, 279, 285 (1936) (reliance upon due process clause of fourteenth amendment rather than fifth amendment's privilege against self-incrimination in holding confession inadmissible). But see *Bram v. United States*, 168 U.S. 532 (1897). In *Bram*, the Supreme Court spoke broadly of the application of the fifth amendment to involuntary statements. *Id.* at 542. The Court stated that "[i]n criminal trials . . . wherever a question arises whether a confession is incompetent because not voluntary, the issue is controlled by that portion of the fifth amendment . . . commanding that no person 'shall be compelled in any criminal case to be a witness against himself.'" *Id.* *Bram* appeared to adopt the view that if a confession was coerced by someone in authority, it would be inadmissible under the fifth amendment irrespective of whether the coercion took place in a courtroom proceeding. See *id.* In subsequent cases involving the admissibility of confessions, the Supreme Court ignored the *Bram* decision, and instead applied the due process "voluntariness" test. See *Dix, Mistake, Ignorance, Expectation of Benefit, and the Modern Law of Confessions*, 1975 WASH. U.L.Q. 275, 289. The Court, however, vigorously upheld the *Bram* decision in *Miranda* stating that *Bram* "set down the Fifth Amendment standard for compulsion which we implement today." *Miranda v. Arizona*, 384 U.S. 436, 461 (1966). For a further discussion of the constitutional significance of *Bram*, see Kamisar, *Equal Justice in the Gatehouses and Mansions of American Civil Procedure*, in *CRIMINAL JUSTICE IN OUR TIME* 47 (Howard ed. 1965).

¹⁹ See, e.g., *Rogers v. Richmond*, 365 U.S. 534, 544 (1961) (dispositive question is

A two-part analysis was developed which utilized a subjective test to ascertain if the incriminating response was essentially the result of free choice,²⁰ and an objective test to determine if the circumstances surrounding such response were inherently coercive.²¹

A major shortcoming of this test was the absence of any clear guidelines for determining the admissibility of incriminating statements made by a suspect during custodial interrogation.²² Consequently, decisions were very often inconsistent.²³ The undesirability of ad hoc analyses ultimately led to the Supreme Court's pronouncement in *Miranda* that all statements made by a suspect during custodial interrogation would be *conclusively presumed*

whether actions of law enforcement officials were such as to overbear suspect's will to resist and bring about confessions not freely self-determined). In *Rogers*, the Court stated that involuntary confessions are inadmissible:

not because such confessions are unlikely to be true but because the methods used to extract them offend an underlying principle in the enforcement of our criminal law: that ours is an accusatorial and not an inquisitorial system—a system in which the State must establish guilt by evidence independently and freely secured and may not by coercion prove its charge against an accused out of his own mouth.

Id. at 540-41 (citations omitted).

²⁰ See, e.g., *Culombe v. Connecticut*, 367 U.S. 568, 602 (1961) (individual's mental state and powers of resistance considered in determining whether confession voluntary). "Whether or not particular police conduct amounts to coercion *depends upon the individual characteristics of the suspect interrogated* . . . What constitutes coercion for one accused will not do so for another because it takes greater pressure to overbear the 'power of resistance' of one individual than another." Comment, *The Coerced Confession Cases in Search of a Rationale*, 31 U. CHI. L. REV. 313, 318-19 (1964) (emphasis added).

²¹ See, e.g., *Ashcraft v. Tennessee*, 322 U.S. 143, 153-54 (1944) (situation so inherently coercive that confession deemed involuntary irrespective of actual effect on suspect). See also White, *Police Trickery in Inducing Confessions*, 127 U. PA. L. REV. 581 (1979) (courts focus on means used to obtain confession). "[C]ertain coercive interrogation techniques result in an 'involuntary' confession as a matter of law . . . *irrespective of their effect on the actual defendant before the court.*" *Id.* at 583-84 (emphasis added).

²² See Bator & Vorenberg, *Arrest, Detention, Interrogation and the Right to Counsel: Basic Problems and Possible Legislative Solutions*, 66 COLUM. L. REV. 62, 72 (1966) ("Judicial decisions speak in terms of the 'voluntariness' of a confession, but the term itself provides little guidance."). The *Miranda* Court recognized this problem when it stated that one of its goals was "to give concrete constitutional guidelines for law enforcement agencies and courts to follow" when considering the admissibility of custodial interrogations. *Miranda v. Arizona*, 384 U.S. 436, 441-42 (1966).

²³ Compare *Lisenba v. California*, 314 U.S. 219, 230-41 (1941) (confession obtained after prolonged interrogation during which police officer struck suspect held admissible) with *Brown v. Mississippi*, 297 U.S. 278, 284-86 (1936) (confessions obtained after suspects were whipped held inadmissible). But see Caplan, *Questioning Miranda*, 38 VAND. L. REV. 1417 (1985). One critic of *Miranda* feels that such prior inconsistent decisions were "less a by-product of the voluntariness standard than a reflection of the deep cleavages in society that were at last becoming apparent." *Id.* at 1434.

compelled, and thus inadmissible, unless the suspect had been informed of his constitutional rights before the statement was made.²⁴

In the years following the *Miranda* decision, the Supreme Court has pursued a course of exception-making²⁵ which has led to speculation that *Miranda* will be abandoned entirely in the near future.²⁶ It appears that one of the severest blows to *Miranda* has come from the Court's decision in *New York v. Quarles*.²⁷

THE *Quarles* PUBLIC SAFETY EXCEPTION

In *Quarles*, a police officer entered a supermarket shortly after midnight pursuant to information supplied by a rape victim that her assailant had entered the store and was armed.²⁸ Upon seeing the police officer, the suspect fled toward the rear of the store.²⁹ After regaining sight of the suspect, the officer ordered him to stop and he complied.³⁰ An empty shoulder holster was discovered during the ensuing frisk.³¹ While surrounded by a number of police officers, the suspect was handcuffed and asked the location of the

²⁴ See *Miranda*, 384 U.S. at 467. See also Gardner, *The Emerging Good Faith Exception to the Miranda Rule—A Critique*, 35 HASTINGS L.J. 429, 447-48 (1984) (custodial interrogation governed by *Miranda* requirements). Another commentator has observed that:

[g]iven the Court's inability to articulate a clear and predictable definition of "voluntariness," the apparent persistence of state courts in utilizing the ambiguity of the concept to validate confessions of doubtful constitutionality, and the resultant burden on its own workload, it seemed inevitable that the Court would seek "some automatic device by which the potential evils of incommunicado interrogation [could] be controlled."

Stone, *The Miranda Doctrine in the Burger Court*, 1977 SUP. CT. REV. 99, 102-03 (quoting S. SCHAEFER, *THE SUSPECT AND SOCIETY* 10 (1967)). For a discussion of the *Miranda* holding, see *supra* note 5 and accompanying text.

²⁵ See, e.g., *Michigan v. Tucker*, 417 U.S. 433, 444-48 (1974) (officer's "good faith" failure to give *Miranda* warnings did not require suppression of confession); *Harris v. New York*, 401 U.S. 222, 226 (1971) (failure to give *Miranda* warnings did not preclude use of defendant's statements to impeach his credibility at trial).

²⁶ See, e.g., *The Supreme Court, 1970 Term—Admissibility of Unlawfully Obtained Statement for Impeachment Purposes*, 85 HARV. L. REV. 3, 53 (1971) ("willingness of the [Burger] Court . . . to retreat from *Miranda* suggests that . . . the Court will abandon *Miranda* altogether").

²⁷ See 467 U.S. 649 (1984). See also Comment, "Public-Safety" Exception to *Miranda*: The Supreme Court Writes Away Rights, 61 CHI.-[J]KENT L. REV. 577, 592 (1985) (the exception constitutes a "serious erosion" of *Miranda*).

²⁸ *Quarles*, 467 U.S. at 651-52.

²⁹ *Id.* at 652.

³⁰ *Id.*

³¹ *Id.*

missing gun.³² He indicated that it was near some empty boxes.³³ After the gun was recovered, the suspect was formally placed under arrest, and then advised of his *Miranda* rights.³⁴

The New York Court of Appeals held that both the gun and the defendant's statement indicating its location were inadmissible because the suspect had not been informed of his *Miranda* rights prior to making the incriminating responses.³⁵ On appeal, the United States Supreme Court reversed and created the public safety exception to *Miranda*.³⁶ The *Quarles* Court used a cost-benefit analysis to demonstrate why *Miranda* warnings should not be required when there is a danger to the public safety.³⁷ The Court reasoned that the *Miranda* majority had been willing to exclude evidence and accept the possibility of fewer convictions of guilty suspects in order to insure full protection of a person's fifth amendment rights.³⁸ The Court then posited that when the failure to elicit evidence from a suspect results not only in fewer convictions of guilty suspects, but also in a danger to the public safety, such a cost would outweigh the benefits provided by *Miranda* warnings.³⁹ Consequently, the Court concluded that evidence obtained without *Miranda* warnings, under such circumstances, should not be suppressed.⁴⁰

The *Quarles* Court explicitly refused to make the public safety exception dependent upon the subjective intent of the interrogating officer.⁴¹ Instead, the Court adopted an objective test in which

³² *Id.*

³³ *Id.* The suspect nodded in the direction of the boxes and responded, "the gun is over there." *Id.*

³⁴ *Id.*

³⁵ *People v. Quarles*, 58 N.Y.2d 664, 444 N.E.2d 984, 458 N.Y.S.2d 520 (1982), *rev'd*, 467 U.S. 649 (1984). The New York Court of Appeals expressly found that "there [was] no evidence in the record . . . that there were exigent circumstances posing a risk to the public safety . . ." *Id.* at 666, 444 N.E.2d at 985, 458 N.Y.S.2d at 521.

³⁶ *New York v. Quarles*, 467 U.S. 649, 655 (1984).

³⁷ *Id.* at 657.

³⁸ *Id.* at 656-57.

³⁹ *Id.* at 657. The *Quarles* Court stated that "the need for answers to questions in a situation posing a threat to the public safety outweighs the need for the prophylactic rule protecting the Fifth Amendment's privilege against self-incrimination." *Id.*

⁴⁰ *Id.* at 659-60.

⁴¹ *Id.* at 656. The Court stated:

In a kaleidoscopic situation such as the one confronting these officers, where spontaneity rather than adherence to a police manual is necessarily the order of the day, the application of the exception which we recognize today should not be made to depend on *post hoc* findings at a suppression hearing concerning the subjective motivation of the arresting officer.

the exception could be invoked even if the officer's main motive for questioning the suspect was to obtain incriminating evidence, so long as the question *could* have been reasonably asked out of a concern for the public safety.⁴²

Through its creation of the public safety exception, the Supreme Court has diminished the desirable clarity of *Miranda*.⁴³ The Court has failed to establish clear guidelines for trial courts to utilize in determining the applicability of the public safety exception.⁴⁴ Presumably, a court would conduct an inquiry into all of the surrounding circumstances of the case in order to ascertain whether the safeguards provided by *Miranda* warnings were outweighed by a danger to the public safety.⁴⁵ Such an approach gives rise to a certain amount of arbitrariness in its application, and thus, is likely to lead to inconsistent decisions.⁴⁶ These shortcom-

Id.

⁴² *Id.* The Court noted, by way of analogy, that the subjective intent of the officer was not dispositive with regard to other constitutional provisions such as the fourth amendment. *Id.* at 656 n.6.

⁴³ In the past, the clarity of *Miranda* had allowed courts to know with a fair degree of certainty when statements obtained during custodial interrogation were to be admitted into evidence. See *Fare v. Michael C.*, 442 U.S. 707, 718 (1979). In his dissenting opinion in *Quarles*, Justice Marshall stated that the "public safety exception destroys forever the clarity of *Miranda* for both law enforcement officers and members of the judiciary." *New York v. Quarles*, 467 U.S. 649, 679 (1984) (Marshall, J., dissenting). Justice O'Connor echoed Justice Marshall's characterization of the public safety exception, stating that "[t]he end result will be a finespun new doctrine on public safety exigencies incident to custodial interrogation, complete with the hair-splitting distinctions that currently plague our Fourth Amendment jurisprudence." *Quarles*, 467 U.S. at 663-64 (O'Connor, J., concurring in part and dissenting in part).

⁴⁴ See Casenote, *Miranda Warning Public Safety Exception: New York v. Quarles*, 10 S. ILL. U.L.J. 735, 743 (1985); Note, *New York v. Quarles: The Dissolution of Miranda*, 30 VILL. L. REV. 441, 457 (1985). The *Quarles* majority also seemed to concede this when it stated: "[i]n recognizing a narrow exception to the *Miranda* rule in this case, we acknowledge that to some degree we lessen the desirable clarity of that rule." *Quarles*, 467 U.S. at 658. However, the majority nevertheless believed that the exception could be easily applied by police, stating that police would be able to distinguish "almost instinctively" between questions necessary to secure the public safety and those aimed solely at eliciting incriminating evidence. *Id.* at 658-59.

⁴⁵ For a discussion of this "balancing" approach, see text accompanying *supra* notes 37-40.

⁴⁶ The *Quarles* case itself is illustrative of the arbitrariness inherent in the public safety exception. See *Quarles*, 467 U.S. at 679 (Marshall, J., dissenting). Upon an examination of the facts of *Quarles*, the New York Court of Appeals found no "exigent circumstances posing a risk to the public safety." *People v. Quarles*, 58 N.Y.2d 664, 666, 444 N.E.2d 984, 986, 458 N.Y.S.2d 520, 522 (1982), *rev'd*, 467 U.S. 649 (1984). The facts of the case appear to support this finding; however, the Supreme Court on its review of the case, reached precisely the opposite conclusion, holding that the gun "obviously posed more than one danger to the public safety . . ." *New York v. Quarles*, 467 U.S. 649, 657 (1984). As Justice Mar-

ings were the primary reason why the *Miranda* Court abrogated the due process "voluntariness" test and held that all statements made by an accused during custodial interrogation would be conclusively presumed compelled in the absence of *Miranda* warnings.⁴⁷ Consequently, the public safety exception, in essence, constitutes an undesirable regression to a pre-*Miranda* period.⁴⁸ Moreover, in creating the public safety exception, the Court appears to have misconstrued *Miranda*. *Miranda* did not prohibit the police from questioning a suspect in the absence of pre-interrogation warnings, it only required that any statements elicited as the result of such questioning not be used against the accused at trial.⁴⁹

shall pointed out: "[i]f after plenary review two appellate courts so fundamentally differ over the threat to public safety presented by the simple and uncontested facts of this case, one must seriously question how law enforcement officers [and trial courts] will respond to the majority's new rule . . ." *Id.* at 679 (Marshall, J., dissenting).

Compare *In re John C.*, 130 App. Div. 2d 246, 519 N.Y.S.2d 223 (2d Dep't 1987) (holding that passage of time among reasons why public safety exception inapplicable) with *State v. Hoyer*, 30 Ohio App. 3d 130, 506 N.E.2d 1190 (1986) (suspect's responses concerning location of gun given after transportation to police facilities admissible under public safety exception).

⁴⁷ See *Quarles*, 467 U.S. at 683 (Marshall, J., dissenting). Justice Marshall noted that under the pre-*Miranda* "voluntariness" test it was very difficult for courts to determine whether a given confession had been coerced. *Id.* (Marshall, J., dissenting). "Difficulties of proof and subtleties of interrogation technique made it impossible in most cases for the judiciary to decide with confidence whether the defendant had voluntarily confessed Courts around the country were spending countless hours reviewing the facts of individual custodial interrogations." *Id.* at 683 (Marshall, J., dissenting). The *Miranda* Court eliminated these practical problems by holding that statements made during custodial interrogation, in the absence of prior warnings, would be presumed compelled in violation of the fifth amendment. See *Miranda v. Arizona*, 384 U.S. 436, 444 (1966).

⁴⁸ See Comment, *The Public Safety Exception to Miranda v. Arizona—New York v. Quarles*, 21 WAKE FOREST L. REV. 169, 189 (1985). For a discussion of some of the shortcomings associated with the pre-*Miranda* "voluntariness" test, see *supra* notes 22-24 and accompanying text.

⁴⁹ See *Quarles*, 467 U.S. at 664 (O'Connor, J., concurring in part and dissenting in part); *Miranda v. Arizona*, 384 U.S. 436, 444 (1966).

Justice O'Connor explained this flaw in the *Quarles* majority's analysis:

The justification the Court provides for upsetting the equilibrium that has finally been achieved—that police cannot and should not balance considerations of public safety against the individual's interest in avoiding compulsory testimonial self-incrimination—really misses the critical question to be decided. *Miranda* has never been read to prohibit the police from asking questions to secure the public safety. Rather, the critical question *Miranda* addresses is 'who shall bear the cost of securing the public safety when such questions are asked and answered: the defendant or the State. *Miranda* . . . found the resolution of that question implicit in the prohibition against compulsory self-incrimination and placed the burden on the State.

APPLICATION OF THE *Quarles* ANALYSIS TO *In re John C.*

The Appellate Division, Second Department, attempted to factually distinguish *In re John C.* from *Quarles*, as a basis for denying applicability of the public safety exception.⁵⁰ The court reasoned that since the youth had been questioned for close to an hour, during which time the apartment where the questioning had taken place had been secured by upwards of fourteen police officers, there lacked the same type of volatile situation that existed in *Quarles*.⁵¹

Although these facts are different from *Quarles*, it is submitted that the cases are not truly distinguishable. It is difficult to see how the passage of time makes a situation such as the one present in *In re John C.* any less volatile. Moreover, it would appear that the converse would be true, that is, the longer a danger is permitted to persist the more likely it is that someone will be injured. Similarly, the fact that the apartment had been secured by upwards of fourteen police officers cannot be said to have made the situation any less volatile than that which existed in *Quarles*, where the suspect was handcuffed and surrounded by a number of police officers in a virtually deserted supermarket in the middle of the night.

Thus, it appears that under the *Quarles* analysis, the appellate division should have found the public safety exception applicable. Such a result, however, would be yet another step toward the complete abandonment of *Miranda*.⁵² Theoretically, all missing weapons could pose a danger to the public safety. In *Quarles*, the Supreme Court suggested that the police would be able to distinguish almost instinctively between questions necessary to secure the public safety and those designed solely to elicit incriminating responses.⁵³ Such a standard, however, does not provide police of-

Quarles, 467 U.S. at 664 (O'Connor, J., concurring in part and dissenting in part) (citations omitted) (emphasis added).

⁵⁰ See *In re John C.*, 130 App. Div. 2d 246, 253-54, 519 N.Y.S.2d 223, 228 (2d Dep't 1987).

⁵¹ *Id.* at 254, 519 N.Y.S.2d at 228. The appellate division also noted that the interrogating officer did not appear to have questioned the youth out of any concern for public safety. *Id.* However, that would be of little consequence since the Supreme Court in *Quarles* explicitly stated that the public safety exception "does not depend on the motivation of the individual officers involved." *New York v. Quarles*, 467 U.S. 649, 656 (1984).

⁵² For a discussion of the trend towards abandonment of *Miranda*, see *supra* notes 25-27 and accompanying text.

⁵³ See *New York v. Quarles*, 467 U.S. 649, 658-59 (1984).

ficers or the courts with any guidance in determining when a situation would be sufficiently volatile for the exception to become operative.⁵⁴

OPPORTUNITY TO PRESERVE *Miranda* THROUGH THE NEW YORK STATE CONSTITUTION

State courts have the power, through the use of their state constitutions, to provide greater protections for the rights of their citizens than those guaranteed under the United States Constitution.⁵⁵ In certain instances, the New York courts have interpreted the New York State Constitution⁵⁶ as providing greater protection than the fifth amendment of the United States Constitution.⁵⁷ Since the *Quarles* analysis impermissibly impinges upon a criminal suspect's right against self-incrimination, it is submitted that the New York courts should, under the New York State Constitution, completely reject the *Quarles* public safety exception, or alternatively, specifically delineate the *narrow* circumstances under which the danger to the public safety would be so great as to render the

⁵⁴ This proposition is exemplified by the opposite conclusions reached by the New York courts and the United States Supreme Court in *Quarles*. See *supra* note 46 and accompanying text. A single familiar standard is necessary to guide police officers who have limited time and expertise to reflect and balance social and individual interests. *Dunaway v. New York*, 442 U.S. 200, 213-14 (1979). *Miranda* supplies police with such a standard.

⁵⁵ See *Oregon v. Hass*, 420 U.S. 714, 719 (1975). "[A] State is free as a matter of its own law to impose greater restrictions on police activity than those [the United States Supreme] Court holds to be necessary upon federal constitutional standards." *Id.* "The federal Constitution establishes minimum guarantees of rights and the granting of additional liberties does not violate its provisions." 1 R. ROTUNDA, J. NOWAK & J. YOUNG, *supra* note 1, § 1.6, at 31-32. See generally *Developments in the Law—The Interpretation of State Constitutional Rights*, 95 HARV. L. REV. 1324 (1982) (analysis of current use of state constitutions).

⁵⁶ See N.Y. CONST. art. 1, § 6 ("No person shall be . . . compelled in any criminal case to be a witness against himself"). The language contained in the New York State Constitution's self-incrimination clause is identical to that found in the fifth amendment of the United States Constitution. See U.S. CONST. amend V.

⁵⁷ See, e.g., *People v. Donovan*, 13 N.Y.2d 148, 151, 193 N.E.2d 628, 629, 243 N.Y.S.2d 841, 842 (1963) (confession obtained after police refused to allow suspect to meet with his lawyer held inadmissible). In *Donovan*, Judge Fuld, writing for the majority, stated, "we are of the opinion that, quite apart from the Due Process Clause of the Fourteenth Amendment, this State's constitutional and statutory provisions pertaining to the privilege against self incrimination . . . require the exclusion of [this] confession . . ." *Id.* at 151, 193 N.E.2d at 629, 243 N.Y.S.2d at 843 (citations omitted). See also *People v. Hobson*, 39 N.Y.2d 479, 481, 348 N.E.2d 894, 896, 384 N.Y.S.2d 419, 420 (1976) (confession suppressed on ground that once attorney enters proceedings defendant cannot waive right to counsel in absence of attorney). In *Hobson*, the court noted that the state constitutional basis for the the rule had "extended constitutional protections of a defendant . . . beyond those afforded by the Federal Constitution." *Id.* at 483-84, 348 N.E.2d at 897, 384 N.Y.S.2d at 422.

exception applicable.⁵⁸

CONCLUSION

In recent years, the United States Supreme Court has limited the scope of the fifth amendment right against self-incrimination.⁵⁹ The Court has unwisely circumscribed the constitutional safeguards enunciated in *Miranda* by creating the *Quarles* public safety exception. By so doing, the Court has increased the opportunities for police officers to justify coercive interrogations with questionable claims of danger to the public safety, the very thing the *Miranda* decision sought to remedy. Thus, the Supreme Court has left it up to the individual states to determine to what extent their citizens shall be guaranteed the right against self-incrimination.⁶⁰

⁵⁸ One possible alternative would be to adopt the approach taken by the California courts in *People v. Riddle*, 83 Cal. App. 3d 563, 148 Cal. Rptr. 170 (1978), *cert. denied*, 440 U.S. 937 (1979). The *Riddle* court recognized an exception to *Miranda* where the following requirements were met: (1) there existed an urgency of need in that no other course of action promised relief; (2) there was a possibility of saving human life; and (3) rescue was the primary motivation of the officer questioning the suspect. *Id.* at 576, 148 Cal. Rptr. at 177.

⁵⁹ See *supra* notes 25-27 and accompanying text. This trend has led to increased reliance by state courts on state constitutional provisions. See Titone, *State Constitutional Interpretation: The Search for an Anchor in a Rough Sea*, 61 ST. JOHN'S L. REV. 431, 436-37 (1987) (transition from Warren Court to Burger-Rehnquist Courts perhaps single most important factor behind heightened attention to state constitutions); Note, *Miranda and the State Constitution: State Courts Take a Stand*, 39 VAND. L. REV. 1693, 1699-1700 (1986) (Burger Court's rejection of Warren Court's broad reading of Bill of Rights has caused state courts to rediscover their state constitutions).

⁶⁰ Justice Brennan has urged states to turn to their own constitutions. He has stated: [S]tate courts cannot rest when they have afforded their citizens the full protections of the federal Constitution. State constitutions, too, are a font of individual liberties, their protections often extending beyond those required by the Supreme Court's interpretation of federal law. The legal revolution which has brought federal law to the fore must not be allowed to inhibit the independent protective force of state law—for without it, the full realization of our liberties cannot be guaranteed.

Brennan, *State Constitutions and the Protection of Individual Rights*, 90 HARV. L. REV. 489, 491 (1977). Justice Brennan also noted that decisions of the Supreme Court interpreting the federal Constitution should not be regarded as dispositive of issues concerning counterpart provisions contained in state constitutions. *Id.* at 502. In such instances, Supreme Court decisions should only be given weight when "they are found to be logically persuasive and well-reasoned, paying due regard to precedent and the policies underlying specific constitutional guarantees . . ." *Id.*

Justice Handler of the New Jersey Supreme Court, in a concurring opinion in *State v. Hunt*, 91 N.J. 338, 450 A.2d 952 (1982), listed seven reasons why a state court could utilize its own constitution as an independent source of protecting individual rights: (1) textual differences between the state constitution and the federal constitution; (2) legislative history

It is suggested that the New York courts use the New York State Constitution to avoid the undesirable shortcomings of the *Quarles* analysis as illustrated in *In re John C.*

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showing an intent to have the state constitutional provision interpreted independently of the federal Constitution; (3) state law predating a Supreme Court decision; (4) differences in the structure between the federal and state constitutions; (5) subject matter of particular state or local interest not requiring a uniform national policy; (6) particular state history or tradition; and (7) public attitudes in the state. *Id.* at 363-68, 450 A.2d at 965-67 (Handler, J., concurring). *See also* Titone, *supra* note 59, at 465 (state's history and tradition may provide basis for interpreting state constitution differently than federal constitution). New York State has a history and tradition of providing greater protection to its citizens through its own self-incrimination clause than the federal government does through the fifth amendment. *See, e.g., supra* note 57. *See also* Galie, *State Constitutional Guarantees and Protection of Defendants' Rights: The Case of New York, 1960-78*, 28 BUFFALO L. REV. 157, 192 (1979) (noting long tradition in New York State of affording broader protection under New York State Constitution than that provided by federal Constitution); Kaye, *Dual Constitutionalism in Practice and Principle*, 61 ST. JOHN'S L. REV. 399, 412 (1987) (same). For a partial list of other states which have construed their state constitution's self-incrimination clause more broadly than Supreme Court decisions interpreting the fifth amendment, see Note, *supra* note 59, at 1717-18 n.181 (1986).